

Civil Enforcement Case Report

Civil Enforcement Case

Basic Information

Case Number: 03-2013-7002
Case Name: BAYER CROPSCIENCE, LP
Case Category: Judicial
Case Status (as of 07/26/2018): Final Order Entered
Case Lead: EPA
Court Docket Number: 2:15-cv-13331
DOJ Docket Number: 90-5-2-1-10802

Relief Sought: Injunctive Relief, Penalty
Enforcement Outcome: Final Order With Penalty
Headquarters Division: --
Branch: --
Result of Voluntary Disclosure? No
Multi-media Case? --
Enforcement Type: Civil Judicial Action
Violations: Risk Management Plan - CAA

Penalties – Case Level

Total Federal Penalty Assessed or Agreed To: \$975,000
Total State/Local Penalty Assessed: \$0
Total SEP Cost: \$7,248,458
Total Compliance Action Cost: \$452,500
Total Cost Recovery: \$0

Case Summary

On July 26, 2018, the District Court for the Southern District of West Virginia, approved a second modification to the Consent Decree lodged by the U.S. Department of Justice (DOJ) on August 31, 2017. The second modification replaces one supplemental environmental project (SEP), the expansion of a sump to contain process wastewater and firefighting water, with two emergency equipment SEPs, consisting of three pumper trucks and associated fire-fighting equipment for two volunteer fire department, costing \$1.7 million, to benefit the Kanawha community. The court found that the emergency equipment SEPs preserved the purpose of the SEP Policy in providing environmental benefits to the affected community because of their closer nexus to the underlying CAA Section 112(r) violations, did not reduce Bayer's overall financial commitment, and did not harm water quality because overflows from the sump had been curbed, making the sump SEP unnecessary. Two days earlier, on July 24, 2018, the court denied a motion to intervene filed by the Natural Resources Defense Council, Inc., People Concerned About Chemical Safety, Inc., Pamela L. Nixon and Kathy Ferguson. The citizen plaintiffs opposed what they argued was a reduction in the financial obligations of Bayer CropScience, and proposed additional SEPs. The Court ruled that the citizen plaintiffs did not have standing because they failed to show an increased risk of harm if the court approved the proposed modification, that the replacement SEPs provided less benefit, or that the requested ruling would redress the alleged injury. However, the Court ruled that the citizen plaintiffs' already-submitted amicus brief would be considered.

Laws and Sections

Law	Sections	Programs
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Citations

Title	Part	Section
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Law	Sections	Programs
CAA	112[R] [7]	Prevention of Accidental Release/Risk Management Plans (RMPs)

Title	Part	Section
40 CFR	68	77
40 CFR	68	73
40 CFR	68	95
40 CFR	68	75
40 CFR	68	71
40 CFR	68	69

Facilities

FRS Number	Facility Name	Address	City Name	State	Zip	SIC Codes	NAIC Codes
110043803676	BAYER CROPSCIENCE USA LP	ROUTE 25 AND INTERSTATE 64	INSTITUTE	WV	25112	1629 2819 2865 2869 2879 9511	311615

Defendants

Defendants and Settlements	In Complaint	In Settlement
BAYER CROPSCIENCE	Y	Y

Related Case Documents

Document	Facility Name	Publish Date	EPA Program
No data records returned			

Case Milestones

Event	Actual Date
Referred To Dept Of Justice	02/05/2013
Enforcement Action Data Entered	02/13/2013
Complaint Filed With Court	09/21/2015
Final Order Lodged	08/31/2017
Final Order Entered	07/26/2018

Pollutants

Pollutant Name	Chemical Abstract Number
Methyl mercaptan	74931

Related Activities

Description	Actual Date
No data records returned	

Final Order 1

Final Order Type: Consent Decree or Court Order Resolving a Civil Judicial Action

Final Order Name: BAYER CROPSCIENCE, LP

Linked Facilities (FRS ID): 110043803676

Final Order Lodged Date: 09/21/2015

Final Order Entered Date: 08/09/2016

Enforcement Action Closed Date: --

Actual Termination Date: --

Penalties/SEPs/Cost Recovery Amounts

Federal Penalty Assessed or Agreed To: \$975,000

State/Local Penalty Assessed: --

SEP Value: \$4,197,403

Compliance Action Cost: \$452,500

Federal Cost Recovery Awarded: \$0

Complying Actions

Complying Action ID	Category	Description
3600012652	Prevention of Future Releases	Risk Management Plan Implemented
3600012653	Work Practices	General Duty CAA 112(r)(1)

Supplemental Environmental Projects

SEP ID	Category	SEP Value	Description
3600002141	Pollution Reduction	\$4,197,403	WEST SUMP EXPANSION, MOBILE COMMUNICATION, POLICE EQUIPMENT FOR NITRO POLICE DEPARTMENT, POLICE EQUIPMENT FOR ST. ALBANS POLICE DEPARTMENT, SCHOOL CLEANOUT AND EQUIPMENT, EMERGENCY EQUIPMENT FOR CHARLESTON FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR DUNBAR FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR INSTITUTE VOLUNTEER FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR JEFFERSON VOLUNTEER FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR NITRO FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR ST. ALBANS FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR SOUTH CHARLESTON FIRE DEPARTMENT, EMERGENCY EQUIPMENT FOR TYLER MOUNTAIN FIRE DEPARTMENT, EMERGENCY RESPONDERS TRAINING, SHELTER-IN-PLACE TRAINING FOR LOCAL SCHOOLS.

Pollutant Reductions

Resulting From	Pollutant	Annual Amount	Units	Media Affected
CA ID 3600012652	Methomyl	7,300	lbs	Air
CA ID 3600012652	Methyl mercaptan	290,000	lbs	Air
CA ID 3600012652	Methyl Isocyanate	40,000	lbs	Air
SEP ID 3600002141	Wastewater	373,000	gal	Water (wastewater to POTW)

Final Order 2

Final Order Type: Judicial Order Amending or Enforcing Consent Decree

Final Order Name: BAYER CROPSCIENCE, LP

Linked Facilities (FRS ID): 110043803676

Final Order Lodged Date: 08/31/2017

Final Order Entered Date: 07/26/2018

Enforcement Action Closed Date: --

Actual Termination Date: --

Penalties/SEPs/Cost Recovery Amounts

Federal Penalty Assessed or Agreed To: \$0

State/Local Penalty Assessed: --

SEP Value: \$3,051,055

Compliance Action Cost: \$0

Federal Cost Recovery Awarded: \$0

Complying Actions

Complying Action ID	Category	Description
No data records returned		

Supplemental Environmental Projects

SEP ID	Category	SEP Value	Description
3600005684	Emergency Planning and Preparedness	\$3,051,055	SEPS as described on attachment

Pollutant Reductions

Resulting From	Pollutant	Annual Amount	Units	Media Affected
No data records returned				